

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 6683/2021

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Syed Sheraz Ali Shah, Senior Clerk (BPS-14), now personal Assistant Ushr Section, Provincial Zakat Administration (HQ), Peshawar..... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Zakat Ushr, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa.
2. Deputy Secretary (Admn) Zakat, Ushr, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa.
3. The Section Officer (Ushr), Zakat & Ushr, Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar...(*Respondents*)

Present:

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant

FAZAL SHAH MOHMAND,
Additional Advocate General, --- For respondents

Date of Institution.....30.06.2021
Date of Hearing.....21.03.2023
Date of Decision.....21.03.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance of this appeal the order dated
04.05.2021 and 19.05.2021 may be set aside and the*

appellant may be allowed to continue as Senior Clerk (BPS-14) Now Personal Assistant at Ushr Section, Provincial Zakat Administration (HQ), Peshawar as Prior to the issuance of the impugned premature transfer order. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.”

02. Brief facts of the case are that the appellant is serving as Senior Clerk (BS-14) in the Provincial Zakat Administration. While posted in the office of Additional Secretary Zakat & Ushr Department Khyber Pakhtunkhwa, he was transferred and posted as PA to Deputy Secretary Social Welfare vide order dated 06.10.2020. He was transferred back to parent department vide order dated 05.03.2021 and subsequently transferred from PZA (HQ) Peshawar to District Zakat Committee Battagram vide order dated 04.05.2021. Feeling aggrieved the appellant filed departmental appeal on 07.05.2021 which was not decided. The appellant approached Civil Court, Peshawar through a civil suit that the Tribunal was non functional. Thereafter the appellant got knowledge that the Tribunal was functional again and withdrew the civil suit and thereafter the appellant approached Service Tribunal on 30.06.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant

and learned Additional Advocate General and have gone through the record with their valuable assistance.

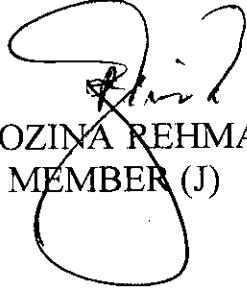
04. Learned counsel for the appellant contended that the appellant had been prematurely transferred from PZA (HQ) Peshawar to District Zakat Committee Battagram. The transfer had neither been made in the public interest nor after completion of normal tenure of posting but issued in an arbitrary manner with total disregard to norms of justice and service laws. Learned counsel for the appellant further contended that wife of the appellant namely Nabeela is serving in the Health Department Khyber Pakhtunkhwa as Charge Nurse and presently posted at Government Maternity Hospital Peshawar; therefore as per the Wedlock policy notified by the Establishment Department on 07.08.2012 posting of serving husband and wife shall be at the same station. He further explained that appeal against pre-mature transfers shall be decided by the competent authority within fifteen days, but the respondents turned deaf ear over the departmental appeal, filed by the appellant. In the last, learned counsel for the appellant prayed that the impugned order dated 04.05.2021 and 19.05.2021 are against the law and are liable to be set aside. To strengthen his arguments, he relied on 2003 PLC (C.S) 1322, 2011 PLC (C.S) 592, Service Tribunal judgment in Service Appeal No. 705/2019 dated 04.10.2019, Service Appeal No. 222/2018 dated 03.04.2018 and Service Appeal No. 3729/2021 dated 21.10.2021.

05. Learned Additional Advocate General argued that the order dated 06.10.2020 was internal arrangement within the department i.e. Provincial Zakat Administration (HQ), therefore, it may not be treated

as transfer case. The appellant applied for leave on 26.04.2021 whereas he was relieved from Provincial Zakat Administration (HQ) Peshawar on 19.05.2021 for joining of his new assignment in District Zakat Committee Battagram. He further argued that a civil servant is bound to serve anywhere in the province under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. A civil servant is not entitled to be posted on his choice post and station. The impugned order is therefore legal, passed by the competent authority according to law and rules, therefore, be maintained in favour of the respondent department and the service appeal be dismissed.

06. During the course of hearing charge assumption report of the appellant was produced by the respondents which transpired that he complied with the order of his transfer/posting by assuming charge in District Zakat Office Battagram on 21.05.2021, however after filing of the instant service appeal he succeeded in getting a favorable order on 06.07.2021 vide which operation of the impugned order to the extent of appellant was suspended. Admittedly, after getting the favorable order he did not perform his duties at Battagram. In the peculiar circumstances of the present case where the grave grievance of the appellant require urgent redressal, we send the case to the departmental authority to decide the departmental appeal of the appellant in writing rendering valid reasons thereof to be made within a period of two months from the date of receipt of copy of this judgment. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 21st day of March, 2023.*



(ROZINA REHMAN)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Kamranullah